NO. 86-173

Supreme Court, U.S.
FILED
OCT 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

RICHARD PAGE HARRIS,

Petitioner,

v.

ATTORNEY GENERAL OF THE STATE OF VIRGINIA, ET AL.,

Respondents.

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# RESPONDENTS' BRIEF IN OPPOSITION TO GRANTING OF A WRIT OF CERTIORARI

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MARY SUE TERRY
Attorney General of Virginia

RICHARD B. SMITH
Assistant Attorney General

Supreme Court Building
101 N. Eighth Street
Richmond, Virginia 23219

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## QUESTIONS PRESENTED

I. DOES THE COURT OF APPEALS' DECISION CONFLICT WITH CARCHMAN V. NASH, 473 U.S. __, 105 S.CT. 3401, 87 L.ED.2D 516 (1985)?

II. WAS PETITIONER'S CONVICTION BARRED BY THE DOCTRINE OF COLLATERAL ESTOPPEL?

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NO. 86-173

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

RICHARD PAGE HARRIS,

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v.

ATTORNEY GENERAL OF THE STATE
OF VIRGINIA, ET AL.,

Respondents.

# RESPONDENTS' BRIEF IN OPPOSITION TO GRANTING OF A WRIT OF CERTIORARI

## PRELIMINARY STATEMENT

The respondents respectfully pray that a writ of certiorari to the judgment of the United States Court of Appeals for the Fourth Circuit entered in this case on June 10, 1986, not be granted.

For purposes of uniformity, the parties will hereinafter be referred to as the petitioner or Harris and the respondents, respectively. All page references will be to the Respondents' Appendix filed herewith and designated (Resp.App.__).

## OPINION BELOW

There is no published opinion of the United States Court of Appeals for the Fourth Circuit, hereinafter the Fourth Circuit or Court of Appeals. Copies of the unpublished per curiam opinion dismissing Harris' appeal for the reasons stated by the district court and the unpublished denial of rehearing and rehearing en banc are set forth in the Respondents' Appendix attached hereto. (Resp.App. A1-A4). The unpublished district court Memorandum Opinion is also set forth in the Respondents' Appendix. (Resp.App. A5-A9).

## JURISDICTION

The petitioner claims that jurisdiction is founded upon 28 U.S.C. § 1254(1).

## STATEMENT OF THE CASE

The petitioner indicated in his certiorari petition's Statement of the Case that he would recite "only as much of the three and one-half year history of this litigation as is necessary for a determination of the issue presently before the Court."[1] According to Harris' rendition, what happened in this case is, in essence, that he arrived in Virginia on April 18, 1983, pursuant to a request by the Commonwealth's Attorney for the City of Staunton under Article IV of the Interstate Agreement on Detainers Act (IADA), but was not tried in Staunton until November 29, 1983, some 225 days

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[1] The petitioner's contention that the respondents "refused" to provide the district court with the state record of his case is untrue: because of the procedural status of Harris' case, the respondents indicated in their Motion For Summary Judgment that "The respondent has not requested that the records of petitioner's trial be forwarded to this Court in light of the clear failure of the petition to state a claim for federal habeas corpus relief. See Kerr v. Finkbeiner, infra. Of course, if the Court desires to review said records, the respondent will ask that they be forwarded to the Court upon further request." The district court did not find it necessary to request the full trial record.

later. The facts that Harris leaves out of his recitation, however, are both pertinent and illuminating.[2]

In 1983, petitioner was serving a sentence in the federal penitentiary in Lewisburg, Pennsylvania. Felony detainers had been lodged against him by officials of several jurisdictions scattered throughout the Commonwealth of Virginia, including Roanoke County and the City of Staunton.

The prosecutor for the City of Staunton received notice of Harris' anticipated arrival in Virginia from Roanoke County officials, who had sought temporary custody of him under Article IV of the IADA. (Resp.App. A14-A15). The City of Staunton - some 90 miles from Roanoke - then requested that it receive temporary custody of Harris after the disposition of the charges pending against him in Roanoke County. (Resp.App. A10-A13).

Harris arrived in Roanoke County pursuant to that jurisdiction's IADA request on April 18, 1983. A preliminary

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[2] Although the State trial record was not reviewed by the district court, the sparse and misleading nature of the petitioner's "facts" compel the respondents to include pertinent portions of the State record in their Appendix to give this Court an accurate understanding of the background of this case.

hearing on the Roanoke County charge was set for May 2, 1983, but Harris succeeded in postponing the preliminary hearing by filing a petition for a writ of habeas corpus in that jurisdiction and obtaining an injunction prohibiting the Commonwealth from prosecuting him until the writ of habeas corpus could be resolved. (Resp.App. A16-A20). The writ of habeas corpus was denied on July 11, 1983, and Harris' trial in Roanoke County was scheduled for November 21, 1983.

When Harris was brought to trial in Roanoke County on November 21, 1983, the charge against him was dismissed. He was brought to Staunton the next day, and a pre-trial motions hearing was held with respect to Harris' claim that his Staunton prosecution was barred by an IADA violation. He admitted at the hearing that he had never asked that the Staunton charges be tried under Article III of the IADA. (Resp.App. A17). At the end of the hearing, the trial judge denied Harris' motion. (Resp.App. A19-A20). Harris' trial was held on November 29, 1983, and he was convicted of the charge and sentenced. (Resp.App. A21-A27).

Harris appealed his Staunton conviction to the Supreme Court of Virginia, complaining that the 120 day time limit of the IADA had been violated, as well as his right to a speedy trial under Virginia law. He did not assert at trial or on appeal that he had actually been prejudiced by the alleged technical violation of Article IV of the IADA. Nor did he assert a collateral estoppel argument. (Resp.App. A28-A41). His petition for a writ of error was refused on September 7, 1984. (Resp.App. A42-A43).

Harris then filed a petition for a writ of habeas corpus in the United States District Court for the Western District of Virginia. The district court dismissed his petition in a Memorandum Opinion on September 17, 1985, citing Kerr v. Finkbeiner, 757 F.2d 604 (4th Cir. 1985), cert. denied, __ U.S. __, 106 S.Ct. 263, 88 L.Ed.2d 269 (1985), finding as a fact that Harris was not actually prejudiced by the alleged technical violation of the 120 day rule and that his claim was thus not a fundamental defect giving rise to federal habeas corpus relief. (Resp.App. A5-A9).

Harris appealed the district court's decision to the United States Court of Appeals for the Fourth Circuit. On

June 10, 1986, his appeal was dismissed in a per curiam unpublished opinion "on the reasoning of the district court." (Resp.App. A1-A2). Harris' petition for rehearing and rehearing en banc was denied on July 8, 1986, no member of the Court of Appeals having requested a poll on the suggestion for rehearing en banc. (Resp.App. A3-A4).

## ARGUMENT

### I. THE FOURTH CIRCUIT'S PER CURIAM UNPUBLISHED DECISION DOES NOT CONFLICT WITH CARCHMAN V. NASH

The Court of Appeals dismissed Harris' appeal on the reasoning of the district court; which had dismissed his habeas petition under the Fourth Circuit's Kerr v. Finkbeiner rule that alleged violations under the IADA do not generally constitute "fundamental defects" and are thus not cognizable under federal habeas corpus absent a showing of prejudice.[3] (Resp.App. A5-A9).

The issue presented here is whether the Fourth Circuit's opinion in this case relying on Kerr v. Finkbeiner conflicts

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[3] The district court found that Harris had failed to establish the requisite prejudice.

with Carchman v. Nash, supra. (Petition for writ of certiorari at 19). It manifestly does not.

The respondents note first that the issue of whether the Kerr v. Finkbeiner rule conflicts with Carchman v. Nash was never asserted in the district court, even though the respondent there had expressly relied on Kerr. And, the district court's decision was not rendered until over two months after Carchman. Indeed, it appears that the first time that the alleged conflict with Carchman was raised was in Harris' Motion To Amend The Petition For Appeal filed with the Fourth Circuit.

Second, the only question in Carchman v. Nash was whether a parole/probation proceeding is subject to the IADA's "speedy trial" provision. The Court's decision in Carchman was based solely on the construction of the statute in the context of parole/probation proceedings, which has nothing whatsoever to do with this case. Moreover, Kerr v. Finkbeiner itself was pending on certiorari at the time of the Carchman decision, yet Carchman was not even mentioned in either the denial of certiorari or the dissent therefrom. 88 L.Ed.2d at 269-71.

Furthermore, the question of whether the Fourth Circuit's opinion conflicts with Carchman aside, because the district court found that Harris' claim was not cognizable even if the Staunton authorities had violated the IADA, neither the district court nor the Fourth Circuit was called upon to decide whether an actual violation had occurred. Yet, it is clear that the Staunton authorities did not, in fact, violate the IADA.

The City of Staunton did not initiate Harris' being brought to Virginia; that was done by Roanoke County. (Resp.App. A14-A15). Harris never requested that he be tried on the Staunton charges and the Staunton authorities only requested that they receive temporary custody of Harris after his Roanoke County charge was resolved. (Resp.App. A10-A13). Harris' charge in Roanoke County was dismissed on November 21, 1983, Staunton obtained Harris the next day and his charge there was resolved within a week.

Where an accused is being tried on one criminal charge pending against him in the receiving State, the 120 day period should be considered tolled on another charge even though both are pending in the same State. For example, in Stroble

v. Egeler, 408 F. Supp. 630 (D.Mich.1976), remanded on other grounds, 547 F.2d 339 (6th Cir. 1977), cert. denied, 440 U.S. 940 (1979), the accused was charged with both assault and murder within the same receiving State. The defendant's trial on the murder charge was not completed until more than 120 days after he arrived in Michigan, but the court rejected his IADA complaint, stating:

> [W]hile petitioner and the state were preparing for trial on the assault charge, the 120 day period should be considered tolled on the murder charge even though both charges were pending in the same state. While petitioner was preparing for trial on the assault charge, he should have been considered unavailable for trial on the murder charge.

408 F. Supp. at 635 n.4. And, unlike the instant case where the separate charges were pending in completely different jurisdictions, both charges in Strobel were in the same jurisdiction. Id. at 632.

Likewise, the Supreme Court of New Hampshire has held that nothing in the IADA requires that every indictment within the receiving state be tried within the Act's time limits. Additional indictments can be tried after the initial

time limit has expired, so long as they commence within a reasonable time after resolution of the first trial. See State v. McGann, 493 A.2d 452, 456 (N.H.1985).

Similarly, when a federal district court obtains a state prisoner for trial under the IADA, only that district is deemed the "receiving state" under the Act, even if there is more than one federal district in the State. United States v. Bryant, 612 F.2d 806 (4th Cir.), cert. denied, 446 U.S. 920 (1979). And, when a defendant is transferred to a third State from the receiving State, the IADA's time limits are tolled as to the receiving State. United States v. Mason, 372 F.Supp. 651 (N.D.Ohio 1973).

Finally, although the respondents contend that no IADA violation occurred with respect to the Staunton charge, the only defect even arguable is the Staunton prosecutor's failure to make a formal Art. IV(c) request for a continuance. The disposition of Harris' motion complaining about an alleged IADA violation in the Staunton Circuit Court on November 22, 1983, however, indicates that the Staunton trial judge implicitly found that the pendency of the Roanoke charges

and petitioner's physical presence in that jurisdiction constituted good cause for a continuance beyond the 120 day period and would have granted one to Staunton if he had been formally requested to do so.

## II. THE DOCTRINE OF COLLATERAL ESTOPPEL DID NOT BAR PETITIONER'S CONVICTION

The petitioner appears to contend that, since another circuit court in Virginia dismissed a charge against him because of a violation of the IADA, then every other court in Virginia was collaterally estopped from trying him. This contention is clearly without merit.

First, this contention was never asserted to the Supreme Court of Virginia. . (Resp.App. A28-A41). Consequently, even if it had been presented to the district court, it would have been barred by the rule of Wainwright v. Sykes, 433 U.S. 72 (1977). But it was never raised in the district court either: it was raised for the first time in the Fourth Circuit in Harris' Motion To Amend The Petition For Appeal filed on or about October 22, 1985.

Second, the issues in the Circuit Courts of Roanoke County and the City of Staunton were not the same: the Circuit Court for Roanoke County did not find that the City of Staunton was barred from trying Harris because of an IADA violation. In any event, whatever the Circuit Court of Roanoke County found, the Supreme Court of Virginia found no defect in petitioner's Staunton trial. And such a finding is conclusive as to all Virginia courts. See Garner v. Louisiana, 368 U.S. 157, 166 (1961).

## CONCLUSION

For the reasons stated above, the respondents respectfully submit that this is not an appropriate case - either factually or legally, for this Court to invoke its certiorari jurisdiction and this Court should therefore deny the petition for a writ of certiorari.

Respectfully submitted,

ATTORNEY GENERAL OF THE
STATE OF VIRGINIA, et al.,
Respondents herein.

MARY SUE TERRY
Attorney General of Virginia

Richard B. Smith

RICHARD B. SMITH
Assistant Attorney General

Supreme Court Building
101 N. Eighth Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that I, Richard B. Smith, Assistant Attorney General of Virginia, am a member of the Bar of this Court, and that on this 30th day of October, 1986, mailed, with first class postage prepaid, three copies of the foregoing RESPONDENT'S BRIEF IN OPPOSITION TO GRANTING A WRIT OF CERTIORARI to Richard Page Harris, #139896, Nottoway Correctional Center, P. O. Box 488, Burkeville, Virginia 23922, the petitioner herein.

Richard B. Smith

Richard B. Smith
Assistant Attorney General

# RESPONDENTS' APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 85-6671

Richard Page Harris,

Appellant,

versus

Attorney General of the
State of Virginia,

Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. James H. Michael, Jr., District Judge. (C/A No. 85-54(H))

Submitted: December 17, 1985
Decided: June 10, 1986

Before WIDENER, SPROUSE, and WILKINSON, Circuit Judges.

(Richard Page Harris, Appellant Pro Se. Richard B. Smith, Assistant Attorney General, for Appellee.)

# UNPUBLISHED

PER CURIAM:

A review of the record and the district court's opinion discloses that an appeal from its order refusing habeas corpus relief pursuant to 28 U.S.C. § 2254 would be without merit. Because the dispositive issues recently have been decided authoritatively, we deny a certificate of probable cause to appeal, deny the application for bail, dispense with oral argument, and dismiss the appeal on the reasoning of the district court. Harris v. Attorney General of the State of Virginia, C/A No. 85-54(H) (W.D.Va., Sept. 17, 1985).

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 85-6671

Richard Page Harris,

Appellant,

versus

Attorney General of the
State of Virginia,

Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. James H. Michael, Jr., District Judge

The appellant's pro se petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Wilkinson, with the concurrence of Judge Widener and Judge Sprouse.

For the Court,

JOHN M. GREACEN

CLERK

FILED

JUL 8 1986

U.S. Court of Appeals
Fourth Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

| | | |
|---|---|---|
| RICHARD PAGE HARRIS,<br>Petitioner,<br><br>v.<br><br>ATTORNEY GENERAL OF THE STATE OF VIRGINIA,<br>Respondent. | ) | Civil Action No. 85-0054(H)<br><br>O R D E R<br><br>By: Hon. James H. Michael, Jr.<br>United States District Judge |

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In accordance with the written Memorandum Opinion entered this day, it is hereby

ADJUDGED AND ORDERED

that:

1. Respondent's motion for summary judgment shall be, and it hereby is, GRANTED:

2. The petition for a writ of habeas corpus shall be, and it hereby is,

DENIED: and

3. The action shall be, and it hereby is, stricken from the active docket of this court.

The clerk is directed to send copies of this Order and the accompanying Memorandum Opinion to petitioner and to counsel for defendant.

ENTER: This 17th day of September, 1985.

UNITED STATES DISTRICT JUDGE

A TRUE COPY, TESTE:

Joyce F. Witt, Clerk

By: Deputy Clerk

Clerk's Office U. S. Dist. Court
AT HARRISONBURG, VA.
FILED
SEP 17 1985
JOYCE F. WITT, Clerk
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

| | | |
|---|---|---|
| RICHARD PAGE HARRIS, Petitioner | ) | Civil Action No. 85-0054(H) |
| v. | ) | MEMORANDUM OPINION |
| ATTORNEY GENERAL OF THE STATE OF VIRGINIA, Respondent | ) | By: Hon. James H. Michael, Jr. United States District Judge |

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Richard Page Harris has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in this court. Petitioner alleges that he is being held illegally pursuant to a conviction on charges of obtaining property by false pretenses in the Circuit Court of the City of Staunton on November 29, 1983, wherein he was sentenced to serve eight years in the penitentiary. Specifically, petitioner alleges that the Interstate

Agreement on Detainers was violated because his trial in the City of Staunton was not commenced within 120 days after acquisition by Virginia authorities.

Respondent argues, correctly, that claims under the Interstate Agreement on Detainers do not constitute fundamental defencts and are not generally cognizable under federal habeas corpus provisions absent a showing of prejudice. Kerr v. Finkbeiner, 757 F.2d 604, 607 (4th Cir. 1985). Petitioner has alleged prejudice in that he was unable to earn money or participate in various rehabilitative programs during the delay. This is not the type of prejudice which constitutes a fundamental defect and which will justify invalidation of a criminal conviction. Cf. Gaddy v. Michael, 519 F.2d 669 (4th Cir. 1975) (parole violation warrant).

Finally, the court notes that the power of a court to try a person for a crime is not impaired by illegal extradition. Frisbie v. Collins, 342 U.S. 519 (1952); Harris v. South Carolina, 642 F.2d 71 (4th Cir. 1981).

Accordingly, respondent's motion for summary judgment shall be granted and the writ of habeas corpus shall be denied in an Order entered this day.

ENTER: This 17th day of September, 1985.

UNITED STATES DISTRICT JUDGE

Clerk's Office U. S. Dist. Court
AT HARRISONBURG, VA.
FILED
SEP 17 1985
JOYCE E. WITT, Clerk
By: Deputy Clerk

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH ANOTHER PROSECUTOR'S REQUEST FOR DISPOSITION OF A DETAINER

To: Warden, United States Penitentiary, Lewisburg, Pennsylvania 17837

According to a letter of December 3, 1982, from Vincent A. Lilley, Assistant Commonwealth's Attorney for Roanoke County, Virginia, a copy of which said letter is attached hereto, Richard Page Harris, a/k/a James William Maddox, is being returned to this state at the request of the Commonwealth's Attorney for Roanoke County, Virginia. I hereby accept the offer of temporary custody of Richard Page Harris, a/k/a James William Maddox, who has a criminal warrant lodged as a detainer against him for a felony--bad check and auto larceny in the City of

Staunton, Virginia, of which I am the Commonwealth's Attorney (prosecutor).

I plan to bring this person to trial within the time specified in Article IV (c) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer immediately after trial.

It is my understanding that the prisoner is being transported to Roanoke County, Salem, Virginia, for his trial on pending felonies within that jurisdiction. It is my request that as soon as he has been tried there that he be brought to the City of Staunton and housed in the Augusta County Jail until he

can be tried here. Thereafter, it is my understanding that he also has pending charges against him in the City of Newport News, Virginia, and the City of Winchester, Virginia, and you may be hearing from these other jurisdictions in a form similar to this one pursuant to Form VIII of the Agreement on Detainers.

It is my understanding that since the prisoner is being brought to Virginia for trial we must dispose of all charges against him in the Commonwealth of Virginia before returning him to your institution, or we will be foreclosed later from being able to bring him back to Virginia once more for resolution of these other charges against him. Thus, we are initiating this request.

Raymond C. Robertson

Raymond C. Robertson,
Commonwealth's Attorney
for the City of Staunton,
Virginia

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

DATED: 2/25/43

SIGNED: Ludwell Burgess
Judge

BUREAU OF PRISONS
Washington, D.C.

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all copies of Form 2. In the case of a request initiated by a prosecutor this Form should be completed after the Warden has indicated his approval of the request for temporary custody or after the expiration of the 30 day period. Copies of this Form should then be sent to all officials who previously received copies of Form 3. One copy also should then be given to the prisoner and one copy should be retained by the warden. Copies mailed to the prosecutor should be sent by certified or registered mail, return receipt requested.

## AGREEMENT ON DETAINERS

## OFFER TO DELIVER TEMPORARY CUSTODY

Date: January 25, 1983

TO: Vincent A. Lilley, Commonwealth Att.
Prosecuting Officer
(Insert Name and Title if Known)

Roanoke County, Salem, Virginia
(Jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, information or complaints are pending.

RE: HARRIS, Richard Page Number 35541-136
(Inmate)

Dear Sir:

Pursuant to the provisions of Article V of the Agreement on Detainers between this state and your state, the undersigned hereby offers to deliver temporary custody of the above-named prisoner to the appropriate authority in your state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is (described in your request for custody of 12-6-82).

(Date)

(The required Certificate of Inmate Status is enclosed.)

If proceedings under Article IV(d) of the Agreement are indicated, an explanation is attached.

Indictments, informations or complaints charging the following offenses also are pending against the inmate in your state and you are hereby authorized to transfer the inmate to custody of appropriate authorities in these jurisdictions for purposes of disposing of these indictments, informations or complaints.

| Offense | County or Other Jurisdiction |
|---|---|
| Bad Checks & Auto Theft | City of Staunton Police Dept. Staunton, VA |
| Forgery | City of Bristol, Briston, VA |

FEB 13

COMMONWEALTH OF VIRGINIA

V. TRANSCRIPT

RICHARD PAGE HARRIS, ALSO KNOWN AS
JAMES WILLIAM MADDOX

THE FOLLOWING IS A TRANSCRIPT OF THE EVIDENCE PRESENTED AT A HEARING OF THE ABOVE STYLED CASE AS TRANSCRIB FROM THE MACHINE OPERATED BY G. FRANKLIN REESE, HEARD BEFORE THE HONORABLE RUDOLPH BUNGARDNER, III, JUDGE OF SAID COURT, ON THE 22ND DAY OF NOVEMBER, 1983. MOTIONS, OBJECTIONS AND EXCEPTIONS ARE INCLUDED AS THEY OCCUR DURING THE PROGRESS OF THE HEARING.

PRESENT: RAYMOND C. ROBERTSON
ATTORNEY FOR THE COMMONWEALTH

VICTOR M. SANTOS
ATTORNEY FOR THE DEFENDANT

RICHARD PAGE HARRIS
DEFENDANT

WANT TO DO, WHICH IS POSSIBLY EXPAND UPON AND EXPLAIN YOUR ANSWERS. RESTATE THE QUESTION COUNSELOR.

Q. DID YOU AT ANY TIME WHILE YOU WERE IN FEDERAL CUSTODY REQUEST THAT YOU BE GIVEN A SPEEDY TRIAL ON ANY OF THE CHARGES THAT YOU KNEW TO BE EXISTING AGAINST YOU IN VIRGINIA?

A. NO, I DID NOT. NOT UNDER ARTICLE 3 OF THE INTERSTATE AGREEMENT ON DETAINERS, NO.

Q. DID YOU UNDER ANY OTHER PROCESS?

A. NO, I DID NOT.

Q. NOW, MR. HARRIS WHEN YOU WERE BROUGHT BACK AT THE REQUEST UNDER ARTICLE 4 OF THE AGREEMENT ON BEHALF OF ROANOKE COUNTY ON APRIL 18TH OF THIS YEAR, DID YOU HAVE A PRELIMINARY HEARING AT THAT POINT SET FOR MAY 2 OF THIS YEAR?

A. A PRELIMINARY HEARING SET FOR MAY 2? WHERE AT SIR?

Q. IN THE CITY OF SALEM UNDER THE ROANOKE COUNTY CHARGES?

A. YOU SEE...THAT'S A HYPOTHETICAL QUESTION...ON MAY THE 2ND...

Q. NO SIR.

A. ON MAY THE 2ND, ON MAY THE 2ND I HAD THE WRIT OF HABEAS CORPUS AT UH...FOR THE JURISDICTIONAL

UNTIL YOUR WRIT OF HABEAS CORPUS COULD BE DECIDED UPON?

A. THAT DIDN'T STOP IT, IF YOU'RE TRYIN TO SAY...

Q. IS THAT TRUE SIR OR NOT?

A. THAT IS NOT TRUE THE WAY YOU ARE PUTTING IT. IT DIDN'T STOP STAUNTON FROM COMING TO GET ME IF THAT'S WHAT YOU ARE GETTING AT. THIS WAS PUT INTO ROANOKE.

Q. DID YOU HAVE, MR. HARRIS, LET ME BREAK IT DOWN INTO SIMPLE PARTS FOR YOU, DID YOU HAVE AN INJUNCTION SERVED ON THE COMMONWEALTH'S ATTORNEY ON MAY 2ND DOWN IN ROANOKE COUNTY?

A. YEAH, I DID, THAT'S RIGHT.

Q. DID THAT INJUNCTION PROHIBIT THE COMMONWEALTH FROM PROSECUTING YOU UNTIL YOUR WRIT OF HABEA CORPUS COULD BE HEARD AND DECIDED UPON?

A. YES, RIGHT.

Q. WAS THAT INJUNCTION THEREFORE IN EFFECT UNTIL JULY 11TH, THE DATE THAT JUDGE KOONTZ RULED ON YOUR WRIT OF HABEAS CORPUS?

A. YEAH, IT WAS UP UNTIL THE 11TH, JULY THE 11TH, RIGHT.

Q. AND IS IT TRUE THAT JUDGE KOONTZ WAS THE JUDGE PRESIDING OVER THAT, THE...

OR WHATEVER YOU WANT TO SAY IS HAVING 120 DAYS IN WHICH TO DO IT. THAT ISN'T TRUE, IT'S EVERY ONE OF THEM, EVERYTHING WITHIN THAT STATE MUST BE CLEARED UP. THAT'S THE REASON WHY THE PROGRAM WAS MADE, THAT'S THE REASON WHY IT WAS MADE UP, THE INTERSTATE AGREEMENT ON DETAINERS.

JUDGE: ALL RIGHT. I BELIEVE THAT THE COURT OUGHT TO STATE ITS RULINGS ON SOME EVIDENCE. THE DEFENSE EXHIBIT A, WHICH PURPORTS TO BE A STIPULATION, IN WHICH READS IN ITS HEADING THAT THE COMMONWEALTH AND DEFENDANT REPRESENT TO THE COURT, IS NOT A STIPULATION, HAS NOT BEEN AGREED TO BY THE COMMONWEALTH AND IT WILL BE REFUSED. THE COURT WOULD NOTE THAT THE EVIDENCE THAT IS STATED IN THERE, NOT THE CONCLUSION, BUT THE STATEMENT OF ARRIVAL HAS BEEN TESTIFIED TO BY THE DEFENDANT HIMSELF, HOWEVER THIS STIPULATION ALSO THEN GOES ON TO MANY CONCLUSIONS AND IT IS IN FACT NOT A STIPULATION AND IS NOT WHAT IT PURPORTS TO BE. IT WILL BE REFUSED. THE DETAINER ACTION LETTER, WHICH IS MARKED EXHIBIT B, THE COURT WILL RECEIVE. EXHIBIT C, WHICH IS ONE PAGE FROM VOLUME 520 F 2ND 830 WILL BE REFUSED THOUGH THE COURT IS AWARE THAT IT IS ENTITLED TO TAKE WITHOUT EVEN HAVING TO FORMALLY ACCEPT JUDICIAL NOTICE OF...IT IS TO TAKE AS THE LAW THAT WHICH APPLIES TO THE PARTICULAR CASE SO THAT THE COURT WOULD BE ABLE TO AVAIL ITSELF OF THE FULL OPINION THAT IS TENDERED

HERE, BUT THIS FORM OF OFFERING WOULD BE INAPPROPRIATE, THEREFORE THAT PAGE WOULD BE REFUSED. NOW, ON THE PARTICULAR POINT IN QUESTION, THE COURT WILL DENY THE MOTIONS OF THE DEFENDANT. THEY ARE FILED IN VARIOUS MANNERS, MOTIONS TO QUASH THE INDICTMENT, MOTIONS TO DISMISS, BUT THEY ARE IN SUBSTANCE THE SAME. THE COURT WILL DENY THEM AND IN THIS REGARD, THOUGH THE MOTION WAS ADDRESSED TO THE CLAIM OF ENTITLEMENT TO HAVE THESE DISMISSED UNDER THE DETAINER ACT, THE COURT WOULD ALSO NOTE THAT UNDER THE VIRGINIA STATUTES AS TO SPEEDY TRIAL, THAT THE PROCEEDINGS ARE WITHIN THAT TIME LIMIT, PROBABLE CAUSE HAVING BEEN FOUND JULY 25 OF 1983. THIS MATTER THEN IS SET FOR TRIAL BY THE PUBLIC DEFENDER, MR. BOBBITT, WHO HAD BEEN APPOINTED AT THE DISTRICT COURT UPON REQUEST BY THE DEFENDANT, AND THE MATTER WAS SET BY AGREEMENT AND CONCURRENCE OF THE PARTIES ON THE DATE THAT THE GRAND JURY MET AND RETURNED THE INDICTMENT, OCTOBER THE 18TH I BELIEVE...OCTOBER 17TH AND IN FACT THE...OCTOBER 17TH AND THEN THE NEXT DAY AN ORDER WAS ENTERED FOR A VENIRE FOR A TRIAL TO COMMENCE ON NOVEMBER 29TH, 1983. ALL RIGHT, THE MOTION WILL BE DENIED AND THIS MATTER WILL THEN BE CONTINUED FOR TRIAL TO BE HAD ON NOVEMBER 29TH. THANK YOU, GENTLEMEN.

MR. SANTOS: YOUR HONOR, FOR THE RECORD, I'M NOT CERTAIN AT THIS POINT WHETHER MR. HARRIS WANTS ME

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF STAUNTON. DECEMBER 29, 1983.

COMMONWEALTH OF VIRGINIA

V. INDICTMENT FOR FELONY - OBTAINING PROPERTY UNDER FALSE PRETENSE (File No. 7131)

RICHARD PAGE HARRIS, also known as JAMES WILLIAM MADDOX

DATE OF BIRTH: March 8, 1932

It is ordered that the evidence and all incidents of this trial be recorded verbatim by electronic device which has been approved by the Court. This day again came the Attorney for the Commonwealth and Richard Page Harris, also known as James William Maddox, who stands indicted of a felony, to-wit: on or about the 11th day of October, 1981, did unlawfully and feloniously obtain property from Floyd G. Corbett, under false pretense, with intent to defraud, in violation of Virginia Code Section 18.2-178, again was led to the bar in the custody of the Sheriff of the City of Staunton, all pursuant to an order of this Court entered on November 22, 1983. And the Court on November 22, 1983 having ruled that the defendant be allowed to represent himself at the trial of this case but requested that Victor M. Santos,

assistant Public Defender, who was heretofore appointed to represent and defend the said Richard Page Harris, also known as James William Maddox, to also be present in the courtroom on this date to provide any assistance which might be desired by the defendant, this day again came also Victor M. Santos, assistant Public Defender. It appears to the Court that all witnesses desired by the defendant have been summoned and are present in Court and that the said defendant now is ready for trial. The Attorney for the Commonwealth also advised the Court that he was ready for the trial of this case. Thereupon the defendant was arraigned upon the indictment and entered a plea of not guilty to the charge contained in the indictment, which plea was tendered by the defendant in person, and the Court, after inquiry, was satisfied that the defendant fully understood the nature and effect of the plea and of the penalties that may be imposed upon a conviction. Although having ruled on November 22, 1983 that the defendant be allowed to represent himself at the trial of this matter, the Court again advised the defendant of his right to have an attorney of his own choosing or to have an attorney appointed to represent him, also

advised the defendant of his right to trial by a jury but also advised him that the jury could be waived if he so desired, and further advised the defendant that if the case was tried by a jury that upon a conviction the jury would fix punishment and not the Court. Whereupon the defendant advised the Court he desired a trial by a jury. The Court, having taken judicial notice that the assistant Public Defender is present in Court and available for consultation and that the waiver of right to counsel has been made knowingly and voluntarily, doth again rule that the defendant be and hereby is allowed to represent himself in this trial. Whereupon the Sheriff of the City of Staunton, pursuant to an order of this Court entered on October 18, 1983 having returned the names of twenty-six persons summoned by him and taken from a list of names drawn by the Clerk of this Court in the presence of the Honorable Rudolph Bumgardner, III, Judge of this Court, from the box and in the manner provided by law, and of the veniremen so summoned and attending, a panel of twenty qualified jurors, free from exceptions for the trial of this defendant, was made up and completed. And the Attorney for the Commonwealth and the defendant, having alternately,

beginning with the Attorney for the Commonwealth and the defendant, having alternately, beginning with the Attorney for the Commonwealth, each stricken from the said panel the names of four of the said veniremen, the remaining twelve, to-wit: Lynn Andrew Combs, Barbara Day Wright, Jerry Wayne Sams, Joyce Cason Fravel, Betty Wright Wade, Nora Harman, Beatrice Ann Morris, Alexander Durrett Kirtley, Jennie F. Mace, Dolly Via Cason, Patsy Miller Rexrode, and Myra Lorraine Ralston Carey, constituted the jury for the trial of the defendant. Whereupon the Court, out of the presence of the jurors selected, inquired of the defendant whether he had additional motions to be considered and on which the Court had not previously ruled. Thereupon the defendant advised the Court there were no additional motions to be considered. Thereupon the jury was sworn the truth of and upon the premises to speak. And the jury having heard all the evidence, having received the instructions of the Court, and having heard the arguments, were sent to their room to consult upon their verdict and after some time returned into Court and presented their verdict in the following words, to-wit: "We, the Jury, find the defendant guilty of obtaining

property by false pretense as charged in the indictment and fix his punishment at 8 years confinement in the penitentiary. Lynn A. Combs, Foreman. Date: 11/29/83." It is ordered that the jury verdict be received and filed. Thereupon the jury was discharged. And it being demanded of the defendant if he desired to make a statement of if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, the Court pursuant to the verdict of the jury doth find the said Richard Page Harris, also known as James William Maddox, guilty of on or about the 11th day of October, 1981, did unlawfully and feloniously obtain property from Floyd G. Corbett, under false pretense, with intent to defraud, in violation of Virginia Code Section 18.2-178 as charged in the indictment and pursuant to the verdict of the jury doth ascertain the defendant's punishment to be eight (8) years, the period ascertained as aforesaid, and that the Commonwealth of Virginia do recover against the said defendant the sum of $935.96, its costs by it about its prosecution in this behalf expended. It is further ordered that

as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the custody of the Director of the Department of Corrections, to be confined and treated in the manner provided by law. The Court orders that the defendant be given credit for time spent in jail awaiting trial, if any credit is due. And the defendant having indicated that he desired to appeal to the Supreme Court of Virginia and that he desired a copy of the transcript, and the Court having fully advised the defendant of his right to employ an attorney to assist him in perfecting his appeal, and if he is without funds is entitled to have an attorney appointed and is entitled to have the state bear the expenses of an appeal; and the defendant having indicated he desired to have counsel appointed to assist him in perfecting his appeal, it is therefore ordered that Victor M. Santos, assistant Public Defender, be and he hereby is appointed to assist the said Richard Page Harris, also known as James William Maddox, in perfecting his appeal. And it is further ordered that the evidence be transcribed in required number of copies and that the costs therefor be paid by the Commonwealth of Virginia

out of the appropriation for criminal costs, said transcript to be filed as a part of the record in this case upon its completion. The Court certifies that at all times during the trial of this case the defendant was personally present and that Victor M. Santos, assistant Public Defender, also was pesonally present and available at all times to give such assistance to the defendant as desired. And the said Richard Page Harris, also known as James William Maddox, is remanded to jail.

Rudolph Bumgardner, III, Judge

Entered Nov. 29, 1983

Common Law Order Book No. 37

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VIRGINIA: IN THE SUPREME COURT OF VIRGINIA

RICHARD PAGE HARRIS

v.

COMMONWEALTH OF VIRGINIA

PETITION FOR
WRIT OF ERROR

Victor M. Santos
P. O. Box 1287
Staunton, VA 24401

Attorney for Petitioner

VIRGINIA: IN THE SUPREME COURT OF VIRGINIA

RICHARD PAGE HARRIS

v. PETITION FOR WRIT OF ERROR

COMMONWEALTH OF VIRGINIA

TO: The Honorable Chief Justice and Associate Justices of The Supreme Court of Virginia

Defendant, Richard Page Harris, is aggrieved by a judgment of the Circuit Court for the City of Staunton entered on November 29, 1983, in a criminal proceeding in which he was the defendant, and represents the following:

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## I

## STATEMENT OF MATERIAL PROCEEDINGS IN THE LOWER COURT

Richard Page Harris was tried in the Circuit Court for the City of Staunton on November 29, 1983, on a plea of not guilty to an indictment charging him with unlawful and feloniously obtaining property from Floyd G. Corbett under false pretense with intend to defraud, in violation of Virginia Code Section 18.2-178. Defendant was tried by a jury, found guilty and sentenced to eight (8) years in the penitentiary.

## II

## ASSIGNMENT OF ERROR

The defendant states the following as his assignment of error:

(1) That defendant was not tried within 120 days as required by §53.1-210, Article IV, of the Code of Virginia and pursuant to said statute the indictment should have been dismissed.

(2) That defendant was denied his right to a speedy trial pursuant to the sixth amendment to the Constitution of the United States.

## III

## QUESTIONS INVOLVED

The questions to be considered in this petition for writ of error are as follows:

(1) Whether defendant was required to be tried within 120 days after being brought to Virginia under the Agreement on Detainers?

(2) Whether defendant's right to a speedy trial was denied?

## IV

## STATEMENT OF FACTS

Defendant was incarcerated in the federal penitentiary in Lewisburg, Pennsylvania prior to April 18, 1983. A detainer, pursuant to §53.1-210 of the Code of Virginia, was issued against defendant by Roanoke County and he was brought from Lewisburg to Roanoke County, Virginia on April 18, 1983. While in custody in Roanoke defendant was brought to Staunton and tried November 29, 1983 on an indictment

alleging that he obtained property under false pretense. A period of 225 days elapsed between the time he was brought to Virginia and the trial date in question.

V

1

The first question to be considered in this petition for writ of error is whether the defendant was tried within the 120 days after being brought to Virginia under the Agreement on Detainers.

Section 53.1-210 of the Code of Virginia, referred to as the Agreement on Detainers, (Agreement) was a cooperative effort by party states to resolve expeditiously and in fairness to inmates, detainers outstanding against a prisoner for untried charges.

Article IV of the Agreement provides, in effect, that a party state may, upon written request, acquire a prisoner of another party state against whom it has a detainer.

Section(c) of Article IV provides in relevant part:

> In respect of any proceeding made possible by this article, trial should be commenced within 120 days of the arrival of the prisoner in the receiving state... .

Failure to try the prisoner within 120 days requires, under section(e) of the Article IV that the charge be dismissed.

In the case in chief, defendant was incarcerated in a federal penitentiary immediately prior to being brought to Virginia. The federal government is bound by the Agreement and qualifies as either a "sending" or "receiving" state as defined in the Agreement. United States v. Mauro, 414 Fed. Supp. 358, §53.1-210 Article II (a).

The State of Virginia would be considered the "receiving" state regardless of which jurisdiction initiated the request for the defendant to be brought to this state. The Agreement does not draw a distinction between political subdivisions within the state. §53.1-210 Article II (c). It is submitted that Staunton's ability to try defendant was "made possible by this Article", and therefore, was subject to the 120 day rule.

Additionally, the defendant testified in a suppression hearing on November 22, 1983, that he received detainers from the City of Staunton on October 13, 1982 (suppression hearing, page 27) and remained in federal custody continuously until April 18, 1983 (suppression hearing, page

27). Staunton was also aware that Roanoke County was bringing defendant to the State of Virginia (suppression hearing, page 18).

Defendant's position is supported by a common-sense reading of the Agreement. Section(b) of Article IV provides that the authorities having the prisoner in custody (the "sending state") shall, in addition to providing the officer requesting the prisoner with certain information, "simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificate".

The only logical reason for this requirement is to put interested jurisdictions within the receiving state on notice that the prisoner will be in the state and alerting them that they must act on their detainer.

This approach is also in keeping with the general law governing jurisdiction over a party within the boundaries of the Commonwealth. In the case of Knott v. Commonwealth, 215 Va. 531, this Court stated at 533:

> The commonwealth acquired sovereign jurisdiction over the person of the defendant the moment he enters her borders.

Once the prisoner is in the receiving state he is available to the various jurisdictions regardless of the reason for which he as originally brought into this state.

Since defendant was not tried on the charge in question within the 120 days provided in the Agreement on Detainers, it is submitted that the verdict of the trial court should be set aside.

2

The second question to be considered in this petition for writ of error is whether the defendant's right to a speedy trial was denied.

The testimony of defendant was that as early as October 13, 1982 detainers had been issued against him by Staunton and that he had been incarcerated in the federal penitentiary continuously from that time forward (suppression hearing, page 27). Nevertheless, it was not until October 17, 1983 that defendant was indicted. Over one year elapsed between the time of the detainer being issued and the trial on November 29, 1983.

It is submitted that none of the delay was attributable to the defendant, but resulted from inaction on the part of the Commonwealth.

A delay of approximately 22 months from arrest to preliminary hearing resulted in dismissal on speedy trial grounds in Fowlkes v. Commonwealth, 218 Va. 763. Also see Cuyles v. Adam, 449 U.S. 433.

There is no evidence indicating why the Commonwealth failed to act in obtaining defendant for trial, but the failure to so act, it is submitted, was unreasonable and a denial of defendant's right to a speedy trial.

## VI

## CONCLUSION

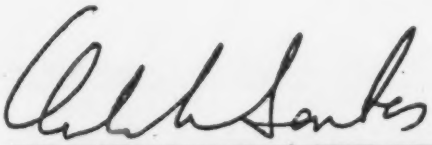
For the reasons stated in this appeal, the verdict of the trial court should be set aside.

## STATEMENT

The Petitioner, Richard Page Harris, being a pauper and without funds to employ counsel, or pay any costs of this appeal asks that he be allowed to proceed in forma pauperis. Petitioner has as his counsel Victor M. Santos, Assistant

Public Defender, Post Office Box 1287, Staunton, Virginia 24401, telephone 703/885-0346. Respondent is the Commonwealth of Virginia, whose counsel is Raymond C. Robertson, Commonwealth's Attorney for the City of Staunton, Virginia. Counsel will mail this petition to the Clerk of the Supreme Court of Virginia in Richmond, Virginia, for filing and wishes to state orally before Justice George M. Cochran at his office in Staunton, the reasons for granting this appeal.

Supersedeas is not requested.



Victor M. Santos, Assistant
Public Defender

February 22, 1984

Allen L. Lucy, Clerk
Supreme Court of Virginia
P. O. Box 1315
Richmond, VA 23219

re: Richard Page Harris v. Commonwealth of Virginia

Dear Mr. Lucy:

Pursuant to your letter of February 16, 1984, I will provide you with the following information:

1) Counsel is court appointed by order dated November 29, 1983.

2) Counsel does desire to argue orally the reasons for granting this appeal in the office of Justice George M. Cochran in Staunton.

If you need any additional information, please let me know.

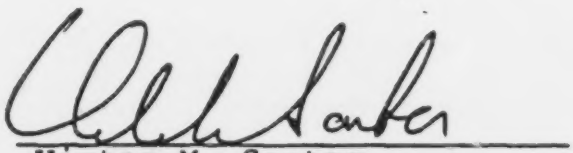
Very truly yours,

/dw

Victor M. Santos
Assistant Public Defender

CERTIFICATE

I, Victor M. Santos, Assistant Public Defender, Attorney for Richard Page Harris, do hereby certify that a copy of this Petition for Writ of Error was mailed to Raymond C. Robertson, Commonwealth's Attorney for the City of Staunton, to his office located at 118 E. Beverley Street, Staunton, Va., this 10th day of February 1984.



Victor M. Santos
Attorney for Petitioner

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 7th day of September, 1984.

Richard Page Harris, also known as
James William Maddox, Appellant,

against Record No. 840212
Circuit Court No. F-7131

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Staunton

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal. Code § 8.01-675.

And it is ordered that the Commonwealth recover of the appellant the costs in this Court which costs shall include a fee of $300 for services rendered by the Public Defender on this appeal, in addition to his necessary direct out-of-pocket expenses, and the costs in the court below.

A Copy,

Teste:
Allen L. Lucy, Clerk

By: Patricia S. Davis
Deputy Clerk

Costs due the Commonwealth by appellant in Supreme Court of Virginia:

| | |
|---|---|
| Public Defender | $300.00 plus his costs and expenses |
| Filing fee | 25.00 |

Teste:

J.L.D. 15
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Allen L. Lucy, Clerk

By: Patricia S. Davis
Deputy Clerk